

Calendar No. 1292

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 1254

ESTATE OF ROMANO EMILIANI

APRIL 3 (legislative day MARCH 30), 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 5295]

The Committee on Claims, to whom was referred the bill (H. R. 5295) for the relief of the estate of Romano Emiliani, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

Page 1, line 6, after the word "the" insert "alleged".

Page 1, line 7, strike out the words "of approximately nineteen hundred acres".

Page 1, line 11, after the word "the" insert "alleged".

Page 2, line 17, strike out the word "person" and insert:

person: *Provided, further,* That the court shall determine the exact amount of land alleged to have been taken, and compensation therefor, if any, shall be fixed at a sum per acre not in excess of the amount per acre of adjacent land as previously fixed by the Joint Land Commission, which had been constituted pursuant to articles VI and XV of the 1903 treaty between the United States and Panama.

The facts are fully set forth in House Report No. 1811, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1811, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5295) for the relief of the estate of Romano Emiliani, having considered the same, report

favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, lines 3 and 4, strike out the words "either the Court of Claims of the United States or".

Page 1, line 5, strike out the words ", as the claimant may elect,".

Page 2, line 3, strike out the words, "or allowed".

Page 2, lines 5 to 19, inclusive, strike out all of section 2, and insert in lieu thereof:

"Sec. 2. All competent testimony, exhibits, or other evidence heretofore admitted in evidence in any proceeding heretofore had under authority of the Panama Canal Act, as amended, and all competent testimony, exhibits, or other evidence heretofore admitted in evidence in any cases involving the lands of Romano Emiliani and heretofore docketed in the United States District Court for the Canal Zone, shall be received in evidence for the same purpose as heretofore admitted in any suit brought or to be brought under authority of this Act, as amended: *Provided*, That such evidence shall be subject, however, to any objections that the United States may interpose as to relevancy, materiality, or competency other than the objection of the witnesses not being produced in person."

STATEMENT OF FACTS

The purpose of H. R. 5295, as amended, is to confer jurisdiction upon the United States District Court for the Canal Zone to hear and determine the claim of Romano Emiliani, his heirs at law, or his legal representatives, for just compensation for the taking by the United States of approximately 1,900 acres of land, adjacent to the city of Colon, Panama, no compensation for the taking of the said lands by the United States ever having been paid to Romano Emiliani, or his heirs, or his legal representatives.

During his lifetime, Romano Emiliani acquired various tracts of land along the water front adjacent to the city of Colon and extending to and including tracts known as Coco Solo, Margarita Island, and El Potrero, all totaling more than 1,900 acres. He improved the land by clearing parts thereof, using one area for cattle grazing and another as a coconut plantation. At the time of the taking of this land, he had some 50,000 bearing coconut trees and some 600 head of cattle. All this land was acquired prior to the time the Republic of Panama was organized and a treaty was entered into with the United States.

On November 18, 1903, a treaty was entered into between the United States and the Republic of Panama, which treaty, together with the Panama Canal Act of August 24, 1912, and an Executive order of the President of the United States, of December 5, 1912, governed the acquisition by the United States of title to land in the Canal Zone and the payment of compensation to the owners of land taken. Under the authority of these measures, the Isthmian Canal Commission, acting for the United States Government, took over all the land in the Canal Zone, including over 1,900 acres of land on the shore of Manzanilla Bay, the title to which land was claimed by Romano Emiliani, and which land today is the site of the Coco Solo naval base, the naval submarine base, radio station, and other military and naval establishments.

On March 6, 1912, an action was commenced in the Supreme Court, Third Judicial District, Canal Zone, by the Panama Railroad Co., against A. S. Mendez, Romano Emiliani, and others, in which action the Panama Railroad Co. claimed title to certain lands, including the one-thousand-nine-hundred-odd acres, the ownership of which was claimed by Emiliani.

On December 5, 1912, while this suit was pending in the court, the President of the United States, pursuant to authority of the Panama Canal Act of August 24, 1912, issued an Executive order declaring that all lands within the limits of the Canal Zone were necessary for the construction, maintenance, operation, or protection of the Panama Canal, and directing the Isthmian Canal Commission to take possession of such land. The Commission, as stated, undertook to acquire possession of such lands, including those claimed to be owned by Emiliani. According to statements of his representatives before your committee, Emiliani protested against the taking of his lands, and some of the occupants of his land were actually arrested in 1913, and detained by the authorities for trespassing. However, some, if not all the Emiliani lands were taken forcibly from him prior to December 1914. The report of the War Department states that actual possession of the land was not taken by the United States until June 1, 1916. On December 22, 1914, Emiliani, in view of his ejectment from the property, filed before the Joint Land Commission (which had been created after the court action above referred to had commenced) a claim for compensation in the sum of \$367,113 for the lands of Coco Solo and improvements. On December 23, 1914, he filed claim for compensation in the sum of \$59,505 for the lands of El Potrero and improvements. According to statements of Emiliani's reports to your committee, Emiliani appeared before the Joint Land Commission under protest and with reservations as to all his rights, and he specifically invited the attention of the Commission to the fact that a suit was then pending in the United States District Court for the Canal Zone that would determine the question of title to the lands in question, and he therefore urged the Commission to withhold any decision until the court had handed down its opinion.

AWARD OF THE JOINT LAND COMMISSION

On July 2, 1918, despite Emiliani's protest, the Joint Land Commission proceeded to make a determination. First it decided that there was no question of ownership of the improvements on the land, and hence made an allowance of \$48,718, which Emiliani accepted as the value of the improvements; namely, the dairy facilities and the coconut trees. These improvements were on various parts of the tracts claimed to be owned by Emiliani. With regard to the land itself, the Commission concluded that Emiliani had title to only 652.84 acres in the tracts he claimed, and they fixed a value of \$9,250 as the amount of the award which should be made to him therefor. Emiliani immediately protested the award as being inadequate and wholly wrong and for an acreage far less than that actually owned by him and which had been taken for the public use, he declined then and afterward to accept the award of \$9,250, and he has never been paid a cent for his lands that were taken.

It will be noted that the Joint Land Commission did not determine the value of the one-thousand-nine-hundred-odd acres of land claimed to be owned by Emiliani. According to representations made to your committee, there never has been any determination of such value. The Commission award purported to determine the value of only a small portion of the entire acreage, the Commission having concluded that only such portion of the lands claimed by Emiliani really belonged to him.

On July 30, 1918, Emiliani, through his attorney, filed a protest and a motion for reconsideration through the Joint Land Commission, specifically calling the attention of the Commission to the action then pending in the District Court for the Canal Zone wherein title to the lands in question was involved.

On August 2, 1918, the Joint Land Commission denied Emiliani's protest and motion for reconsideration.

On January 8, 1919, Emiliani notified the Governor of the Panama Canal of his refusal to accept the award of the Commission because of its failure to award him just compensation for all the one-thousand-nine-hundred-odd acres to which he claimed title.

DECISION OF THE DISTRICT COURT THAT TITLE WAS IN EMILIANI

The United States District Court for the Canal Zone handed down its decision in the case of *Panama Railroad Company v. Mendez, Emiliani, et al.*, which decision is attached hereto and made a part of this report, marked "Exhibit A." As to the question of title to the 1,378 acres in the Coco Solo tract, the court found:

"Wherefore it is ordered, adjudged, and decreed by the court that the said Romano Emiliani is entitled to the relief prayed for in the amended answer filed herein asking for affirmative judgment in his behalf, and is now, and was at all times during his peaceable, continuous, uninterrupted, and notorious possession under claim of absolute ownership, without violence, concealment, or interruption, for a period of more than 30 years last past, the owner in fee simple of, in, and to the land and estate of Coco Solo, more particularly described as follows:"

(Here follows a detailed description of the parcels of land known as Coco Solo and La Margarita.)

The court made a similar finding that title to the 523.64 acres in the El Potrero tract was likewise in Emiliani, and the decision sets forth also a detailed description of that parcel.

The court's decision concludes:

"And the title, estate, and beneficial interest of the said Romano Emiliani, in and to the above described real estate, and to every part thereof, is herewith established and confirmed."

The report of the War Department with regard to this decision attempts to convey the inference that this was an uncontested action and that the decision of the court was rendered in default of opposing contentions, and that the United States was not a party to this action or represented in any way. The fact is that the Panama Railroad Company was the agent of the United States, and was under the ownership as well as control of the United States, the United States owning all of its capital stock. The title to the Emiliani lands was directly in question, and proofs were offered. This was the court which alone had final authority to pass on questions of title to lands within the Canal Zone. It can hardly be held by this committee that the United States District Court for the Canal Zone handed down a frivolous decision, a decision which was meaningless and which is not entitled to full faith and credit, even though such decision may have been in the nature of a decree of default, made upon the motion of Emiliani, one of the defendants in the action. The finding and the decision of the court as to the question of title were nevertheless made; they are of record; they have never been overruled, and they should be entitled to stand as being finally determinative as to the question of title to the lands in question in this case.

Emiliani endeavored without success to secure reconsideration of his claim by the Joint Land Commission. Under the treaty with Panama, he had no recourse to the courts of the United States; his only recourse was to the Joint Land Commission, which failed to pass on the merits of the claims he submitted, and which confined its activities to a determination beyond its purview, namely, that of title; and, as to value, it determined not the value of all the lands claimed to be owned by Emiliani, but only the value as to a small part thereof. He had no other remedy than to appeal to the constituted authorities of the Canal Zone, and he did endeavor, unsuccessfully, to have his case reopened or adjudicated anew by the Governor of the Panama Canal.

He appealed his case over and over again, but met with no success in the Canal Zone. He has now come to the Congress requesting that he be given a day in court in order that he may have the court determine what has never been determined, namely, the value of the lands which were taken from him for the public use, and for which lands he has never been paid anything. It seems only just and fair, in the opinion of your committee, that he be given such an opportunity before the court.

PRECEDENT FOR THE ENACTMENT OF THIS BILL

There is ample precedent for the enactment of H. R. 5295, in order to enable Romano Emiliani to go into court and have his claims for just compensation for the taking of his property in the Canal Zone fully and finally determined.

The Secretary of War recommended, and the Congress has already enacted, a jurisdictional act, extending this same right to the Playa de Flor Land & Improvement Co., of the Canal Zone. That company has already, pursuant to such legislation, filed suit before the United States District Court for the Canal Zone and this suit is now being considered by that court.

Attached hereto are copies of the two statutes granting jurisdiction to the district court to hear and determine the claims of the Playa de Flor Co. for just compensation for its property which was taken in the Canal Zone. These acts are Private Act No. 165, approved May 21, 1934, Seventy-third Congress (together with H. Rept. No. 321 thereon), and Private Act No. 234, approved August 10, 1939 (together with H. Rept. No. 1375, made thereon), marked "Exhibits B and C."

COMPARISON OF THE PLAYA DE FLOR CLAIM AND THE CLAIM OF ROMANO EMILIANI

(1) The claim of the Playa de Flor Land & Improvement Co. is for compensation for 3,276.9 acres of land taken by the United States for fortification purposes in the Canal Zone.

The claim of Romano Emiliani is for compensation for one-thousand-nine-hundred-odd acres of land, taken by the United States for public purposes, the land now being used by the United States as sites for the Coco Solo naval base, the Navy submarine base, radio station, and Military and Naval Establishments.

(2) The property of the Playa de Flor Co. was appropriated by the United States Government pursuant to Executive order of the President of December 5, 1912, under authority of the Panama Canal Act of August 24, 1912.

The property of Romano Emiliani was appropriated under the same Executive order.

(3) The claim of the Playa de Flor Co. for just compensation for its lands and improvements was filed before the Joint Land Commission, which adjudicated damages for lands and improvements taken in the Canal Zone. However, the claim was withdrawn by the company's attorney before final award was made by the Commission. The Secretary of War commented upon this withdrawal as follows:

"It was stated that the withdrawal was made because the Commission was bound by article 6 of the treaty of 1903 between Panama and the United States to determine damages for lands taken on the basis of their value in 1903."

In other words, the Playa de Flor Co. refused to let the Joint Land Commission proceed to a final award with respect to its claim, because the commission indicated it would have to determine the value of the lands taken as of 1903, the date of the treaty, rather than the value of the lands as of 1912, the date the lands were taken over by the United States.

The claim of Emiliani for compensation for his lands and improvements was also filed before the Joint Land Commission. Emiliani appeared before the Commission under protest, and with reservation of all his rights, and he specifically requested the Commission to withhold making any award until an action then pending in the United States District Court for the Canal Zone, in which he was a defendant, with respect to the title to the lands in question, was finally determined. However, the Commission proceeded to make an award. There was no dispute as to Emiliani's ownership of the improvements on the lands to which he claimed title, and he was awarded and accepted the allowance made to him by the Commission therefor. But he refused to accept the award made by the Commission for only 652.84 acres, because the award was not for the entire one-thousand-nine-hundred-odd acres to which he claimed title.

(4) The Playa de Flor Co., after withdrawing its claim from the Joint Land Commission, made numerous attempts to secure a settlement and compensation for the lands taken, but without success. Compromise offers were made to the company by the Governor of the Canal and by the Secretary of War, but no offers of settlement were accepted by the company.

Emiliani filed a motion for reconsideration with the Joint Land Commission, urging again his claim to title to over 1,900 acres, but the Commission denied his motion. After that, the United States District Court for the Canal Zone handed down its decision, holding that title to these one-thousand-nine-hundred-odd acres was in Emiliani. On this basis of such opinion, he endeavored to secure just compensation for these entire 1,900 acres which had been taken from him. All his efforts before the authorities at the Canal Zone met with no success. He had no right of appeal to the United States courts for the determination of such compensation.

(5) The Playa de Flor Co. claim was then presented to the Congress. In fact, the Secretary of War submitted to the Congress draft of a bill for the company's relief and recommended that the same be enacted into law. After reciting the history of the claim, the Secretary of War concluded his letter of January 26, 1932, recommending the passage of the bill, as follows:

"This offer for settlement not being acceptable, I then concurred in the recommendation of the Governor, and advised the representative of the claimants that I would recommend to the Congress the passage of an act which would authorize the district court of the Canal Zone to hear and finally determine the questions involved and the amount payable by the United States for the land which was taken over from the Playa de Flor Land & Improvement Co.

"It is very desirable to finally dispose of this claim. The method proposed for its settlement is satisfactory to the claimants, and it is, therefore, recommended that jurisdiction be conferred upon the district court of the Canal Zone to hear and finally determine the questions involved."

As the result of the foregoing recommendation, the bill was favorably reported in the Seventy-second Congress, but not passed. It was reported again in the Seventy-third Congress, when it was enacted into law and approved by the President on May 21, 1934. This law was amended by private act, approved August 10, 1939, in order to permit evidence taken in a previous case in the United States District Court for the Canal Zone, to be used in evidence in the suit brought by the Playa de Flor Co., under authority of its jurisdictional act of May 21, 1934.

Emiliani, on the other hand, through his heirs, has appealed to the Congress on his own initiative, after all his own efforts during his lifetime in the Canal Zone

failed to secure for him just compensation for the taking of his lands. Jurisdiction would be vested by H. R. 5295 in the United States District Court for the Canal Zone to hear and determine his just claim for compensation. This bill, as amended, conforms to the legislation previously enacted for the Playa de Flor Co., and which was recommended by the Secretary of War.

CONCLUSION

There appears to be no valid reason—and the representatives of the War Department, at the hearing held by your committee, could give no valid reason—why Emiliani, his heirs, or his representatives should not be given the same right to present their case in the United States District Court for the Canal Zone, as has already been accorded the Playa de Flor Land & Improvement Co. It is well settled in our law that an owner of private lands, taken for public use, is entitled to just compensation therefor, and Emiliani should be given full opportunity to have his claim for just compensation to him finally determined by a competent tribunal.

The Secretary of War, in his report, stated that 3,598 claims for compensation totaling \$20,660,371.19, were filed with the Joint Land Commission, which however, made awards in only 213 cases for \$1,568,581.49. The remaining cases were dismissed for various reasons, such as lack of jurisdiction, lack of evidence, question of duplication, or on claimant's own motion. The War Department does not admit knowledge of any of these remaining cases being in any situation at all comparable to that of the claim of the Playa de Flor Co., or Romano Emiliani.

The War Department representatives at the hearing did not know of a single other claimant, except the Playa de Flor Co. who appeared before the Joint Land Commission, filed his claim, withdrew it because he found the Commission could not award him compensation for the lands as of the date of taking, and thereafter, and even to this date, has kept his claim alive and is still seeking redress or just compensation for his lands so taken.

The War Department representatives did not know of a single other claimant, except Romano Emiliani, who appeared before the Joint Land Commission, filed his claim, refused to accept the award of the Commission with respect to his lands because the Commission's award did not cover the entire acreage taken to which he claimed title, and thereafter, and even to this date, has kept his claim alive and is still seeking redress or just compensation for all the lands so taken. No other claimant is admitted to be in existence who has so diligently exhausted every possible effort, every channel of relief, to have his claim reopened or adjudicated again and just compensation paid.

In other words, by the admission of the War Department representatives, no other claimants except the Playa de Flor Co. and Emiliani have appealed to the Congress for equitable relief. Therefore your committee has no reason to assume that any other claimants will make similar application or that a flood of claims will be filed with the Congress because of the enactment of H. R. 5295. There is no evidence whatever that any other claimants who long ago accepted the awards of the Commission or whose claims were denied or dismissed, or withdrawn, for any reason, have, since the Joint Land Commission ceased to function in 1920, kept their claims alive and endeavored in all these years to get compensation from the duly constituted authorities of the Canal Zone. Only the Playa de Flor Co. and Romano Emiliani followed such steps and, after exhausting every remedy open to them, came to Congress for relief.

Congress granted relief to the Playa de Flor Co. by the enactment of a jurisdictional bill. The estate of Romano Emiliani is entitled to similar equitable consideration in order that it, too, may endeavor to effect final, fair, and full settlement of Emiliani's claims for just compensation. The enactment of H. R. 5295 is therefore recommended.

EXHIBIT A

UNITED STATES OF AMERICA—CANAL ZONE

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF THE CANAL ZONE, CRISTOBAL
DIVISION

THE PANAMA RAILROAD COMPANY, A CORPORATION, PLAINTIFF

v.

A. S. MENDEZ, ROMANO EMILIANI, ET AL., DEFENDANTS

Final Decree: No. 2. Civil.

And now on this 26th day of February 1921, this cause coming on for final hearing upon the pleadings filed by the respective parties plaintiff and defendant, and pursuant to the interlocutory judgment heretofore entered upon the motion of the defendant, Romano Emiliani, and the evidence introduced by the said Romano Emiliani, in support of the affirmative relief prayed in his amended answer heretofore filed in this cause, the court having heard the evidence and being fully advised in the premises, finds the following facts as having been established by the said defendant Romano Emiliani, to wit:

First. That the said Romano Emiliani first purchased, occupied, and settled upon the lands and estates described in his amended answer filed herein, and hereinafter described, in the year 1884, and that he and those under whom he claims, his agents, representatives, and tenants have been in the continuous possession thereof under notorious claim of title and ownership, and without violence, concealment or interruption, and engaged in the occupation and cultivation of said lands for a period of more than 30 years prior to the year 1916.

Second. That the public documents evidencing the purchase and transfer of the lands and estates known and designated as Coco Solo and El Potrero from the former owners and occupants to the said Romano Emiliani prior to the month of March 1885 were destroyed in the burning of the city of Colon during the insurrection that transpired in the said month and year.

Third. That the following public documents and deeds of title to the lands and estate of Coco Solo, were registered by the owner Romano Emiliani, subsequent to the year 1885, to wit:

Public Document No. 78, dated May 10, 1889, wherein Eusebio Tejada, in ratification of a prior purchase, conveyed to Romano Emiliani.

Public Document No. 41, dated March 21, 1896, wherein Jesus Parada Loal, conveyed to Romano Emiliani, ratifying a sale made in July 1892.

Notarial document No. 51, dated April 22, 1890, wherein Mrs. Juana Bataye, conveys to Romano Emiliani.

Notarial document No. 24, dated March 6, 1899, wherein Mrs. Eusebia Medrano, conveys to Romano Emiliani.

Private Document dated April 12, 1888, wherein Jose J. Paparo, conveys to Romano Emiliani.

Fourth. That the following public documents and deeds of title to the lands and estate of El Potrero, were registered by the owner Romano Emiliani, subsequent to the year 1885, to wit:

Public Document No. 176, dated August 27, 1887, wherein Romano Emiliani conveys to his brother Pio Emiliani.

Public Document No. 59, dated August 5, 1901, wherein Pio Emiliani, reconveys to Romano Emiliani.

Fifth. That all of the public documents enumerated in the third and fourth paragraphs preceding were duly registered in the office of the Registrar of Property for the Canal Zone, in the year 1908, and that such deeds and documents show on their face that title to the lands of Coco Solo and El Potrero was vested in the said Romano Emiliani.

Sixth. That the boundaries and dimensions of the lands and estate of Coco Solo and El Potrero, as indicated by the old fence lines, were established and maintained by Romano Emiliani and those under whom he claims, and were maintained continuously for more than 30 years last past by the owner as partition fences, and that the fence lines so established and maintained, as hereinafter specifically described, constitute a part of the boundary line of the said lands and estates.

Seventh. That the maps and surveys of the lands and estates known as Coco Solo and El Potrero, submitted in evidence in the trial hereof, with respect to the limits and boundaries of the said lands, are in accord with the descriptions thereof set forth and contained in the deeds and documents of title produced in evidence, and the boundaries on the land side of said estates are identical with the ancient fence lines as established and maintained by the said Romano Emiliani and those under whom he claims for more than 30 years last past.

Eighth. That the boundaries and limits of the said lands and estates of Coco Solo and El Potrero, as set forth and contained in the amended answer of the defendant Romano Emiliani, filed in this cause, are in accord with the deeds and documents of title submitted in evidence, and identical with the limits and boundaries as set forth in the subsequent surveys of said real estate.

Ninth. That the public records relating to the title and ownership of lands within the former District or Province of Colon, Republic of Colombia, now within the Cristobal Division of the Canal Zone, including the territory within which the lands and estates of Coco Solo and El Potrero are located, were destroyed by fire in the month of March 1885, and that at the time of the destruction thereof such public records were in the custody of the proper Government officials and not under the control or supervision of the owner of said lands, and public documents of title or copies thereof, relating to the possession and ownership of lands within the said territory, prior to the said month of March 1885 are now unobtainable.

Tenth. That this suit was originally instituted under the provisions and procedure of chapter X, of the Code of Civil Procedure of the Canal Zone, service being had upon the defendants named and all persons having, or claiming to have, any right, title, or interest in the said lands, in accordance with provisions of said chapter, and that no party named as defendant or other parties duly summoned according to law, have appeared to assert any claim or demand adverse to that of Romano Emiliani in the lands and estates of Coco Solo and El Potrero; and the plaintiff herein, the Panama Railroad Co., has caused to be entered in this suit its disclaimer to any right, title, or interest in and to the said lands and estates described in the amended answer of the owner, Romano Emiliani.

Wherefore it is ordered, adjudged, and decreed by the court that the said Romano Emiliani is entitled to the relief prayed for in the amended answer filed herein asking for affirmative judgment in his behalf, and is now, and was at all times during his peaceable, continuous, uninterrupted, and notorious possession under claim of absolute ownership, without violence, concealment, or interruption, for a period of more than 30 years last past, the owner in fee simple of, in, and to the land and estate of Coco Solo, more particularly described as follows: "That piece, parcel, and tract of land, known as the estate of Coco Solo, and La Margarita, lying, being, and situate in the Cristobal Division of the Canal Zone, whose boundaries and dimensions are as follows:

"Beginning at a point on the east shore of the Bay of Manzanillo, opposite the island of Manzanillo, which said point has a bearing of north, 85 degrees, 25 minutes east, to and with the lighthouse located on the west side of the Bay of Limon, at the place called Toro Point; thence following the meanderings of the shore line of the said Bay of Manzanillo, in a southerly direction to a point on the east shore thereof, south, 10 degrees, 40 minutes east, 6,855 feet distant in a direct line from the point of beginning; thence continuing along the easterly shore line of the Bay of Manzanillo, in a southerly direction to a point at the beginning of a fence line, which said point is south 18 degrees, 47 minutes east,

1,085 feet distant from the last mentioned point; thence along the line of said fence north, 75 degrees, 21 minutes east, 6,358 feet to a point on said fence line; thence continuing along said fence line north, 28 degrees, 46 minutes east, 1,040 feet to a point; thence continuing along said fence line north 58 degrees, 14 minutes east, 1,670 feet to a point; thence along said fence line north, 39 degrees, 38 minutes west, 5,495 feet to a point; thence along said fence line north, 72 degrees, 1 minute west, 2,598 feet to a point lying to the north of the Coco Solo River and to the east of Margarita Island, on the shore of Manzanillo Bay; thence following the meanderings of the shore line of the said Bay of Manzanillo, to and across the mouth of the Coco Solo River, to the point of beginning, which said point of beginning is south, 41 degrees, 54 minutes west, 4,015 feet in a direct line from the last above-mentioned point; the said tract of land being bounded in general as follows: On the north, by lands belonging to persons unknown and the waters of Manzanillo Bay; on the west by the Bay of Manzanillo: On the south, by lands said to belong to the heirs of T. R. Cowan; and on the east, by lands said to belong to the heirs of T. R. Cowan; the said tract or parcel of land above described, comprising an area of 1,378 acres, more or less."

And the title, estate and beneficial interest of the said Romano Emiliani, in and to the above described real estate, and to every part thereof, is herewith established and confirmed.

And it is further ordered, adjudged, and decreed by the court that the said Romano Emiliani, is now, and was at all times during his peaceable, continuous, uninterrupted and notorious possession under claim of absolute ownership, without violence, concealment, or interruption for a period of more than 30 years last past, the owner in fee simple of, in and to the land and estate of El Potrero, more particularly described as follows:

"That piece, parcel, and tract of land, known as the land and estate of El Potrero, lying, being, and situate in the Cristobal Division of the Canal Zone, whose boundaries and dimensions are as follows:

"Beginning at a point on the east side of what is known and designated as the Mindi Diversion Canal, at a spot marked by an iron monument, the same being approximately 400 feet south of the railroad bridge crossing the said Mindi Diversion Canal; thence along the east shore line of the said Mindi Diversion Canal, to a point north, 14 degrees, 52 minutes west, 459.31 feet distant in a direct line from the said point of beginning; thence following on and along the eastern shore of the said canal to a point north 24 degrees, 15 minutes east, 2,430 feet distant from the last above-mentioned point; thence north, 59 degrees, 12 minutes east, 810 feet to a point; thence north, 32 degrees, 5 minutes east, 900 feet to a point on the west bank of the creek or stream known and designated as Escondido or Agua Dulce; thence following the meanderings of the said creek or stream on and along the west bank thereof in a southeasterly direction, to a point on the west bank thereof, 5,100 feet distant in a direct line from the last above-mentioned point, and to a point or place at the beginning of a fence line; thence south along said fence line 180 feet; thence continuing along said fence line south 38 degrees, 30 minutes east, 170 feet to a point; thence along said fence line, south 62 degrees, 54 minutes west, 240 feet to a point; thence due south along said fence line, 280 feet to a point; thence following said fence line south, 43 degrees, 38 minutes west, 220 feet to a point; thence along said fence line south, 84 degrees, 22 minutes west, 215 feet to a point; thence along said fence line south, 28 degrees, 24 minutes west, 175 feet to a point; thence along said fence line south, 77 degrees, 00 minutes west, 410 feet to a point; thence along said fence line south, 66 degrees, 5 minutes west, 220 feet to a point; thence along said fence line, north 58 degrees, 8 minutes west, 170 feet to a point; thence along said fence line, south 33 degrees, 6 minutes west, 150 feet to a point; thence along said fence line, south 6 degrees, 34 minutes west, 885.82 feet to a point; thence along said fence line, south 28 degrees, 9 minutes west, 1,033.45 feet to a point; thence along said fence line, south 83 degrees, 00 minutes west, 143 feet to a point; thence along said fence line, north 87 degrees, 34 minutes west, 875 feet to a point; thence along said fence line, south 46 degrees, 30 minutes west, 623.35 feet to a point; thence along said fence line, north 59 degrees, 13 minutes west, 902.22 feet to a point; thence along said fence line, south 68 degrees, 45 minutes west, 902.22 feet to a point; at the southernmost part of the said tract of land; thence continuing along said fence line north 22 degrees, 7 minutes east, 220 feet to a point; thence along said fence line, north 9 degrees, 45 minutes west, 738.18 feet to a point; thence following said fence line, north 51 degrees, 38 minutes west, 70 feet to a point; thence along said fence line, north 5 degrees, 34 minutes west, 442.91 feet to a point; thence along said fence line, north 75 degrees, 46 minutes west, 229.66 feet to a point; thence along said

fence line, north 51 degrees, 47 minutes west, 328.08 feet to a point; thence along said fence line, north 17 degrees, 2 minutes east, 114.82 feet to a point; thence along said fence line due north, 295.27 feet to a point; thence along said fence line, north 42 degrees, 32 minutes west, 311.68 feet to a point; thence along said fence line, north 82 degrees, 2 minutes west, 164.04 feet to a point; thence along said fence line, north 56 degrees, 36 minutes west, 295.27 feet to the point of beginning; the said above tract of land being bounded in general as follows: On the north, by the creek or stream known as the Escondido or Agua Dulce; on the east, by lands belonging to persons unknown; on the south, by lands said to belong to T. Grant Evans, Alex Lee, and F. De Leon; and on the west by the Mindi Diversion Canal, and a mangrove swamp; the said above-described real estate comprising an area of 523.64 acres, more or less.

And the title, estate and beneficial interest of the said Romano Emiliani, in and to the above-described real estate, and to every part thereof, is herewith established and confirmed.

J. W. HANAN,
*Judge, United States District Court for the District
of the Canal Zone, Cristobal Division.*

Attest:

J. S. CAMPBELL,
Assistant Clerk, United States District Court, Cristobal Division.

Filed February 26, 1921.

EXHIBIT B

[PRIVATE—No. 165—73D CONGRESS]

[H. R. 5284]

AN ACT For the relief of the Playa de Flor Land and Improvement Company

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the District Court of the Canal Zone to hear and determine, but subject to the provisions for appeal as in other cases provided by the Panama Canal Act, as amended, the claim of the Playa de Flor Land and Improvement Company against the United States on account of property taken by the United States in the Canal Zone.

Approved, May 21, 1934.

[H. Rept. No. 321, 73d Cong., 2d sess.]

The Committee on Claims, to whom was referred an act (H. R. 5284) for the relief of the Playa de Flor Land & Improvement Co., having carefully considered the same, report thereon with the recommendation that it do pass.

All of the facts in this meritorious case are set forth in letters and reports from the War Department, mostly correspondence between the Secretary of War and Hon. John C. Schafer, and the report of the Senate Committee on Inter-oceanic Canals. There is a quite voluminous file in possession of the Committee on Claims, and all evidence contained therein recommends enactment of the proposed legislation.

The bill confers jurisdiction upon the District Court of the Canal Zone to hear and determine, without intervention of a jury, but subject to the provisions for appeal as in other cases provided by the Panama Canal Act, as amended, the claim of the Playa de Flor Land & Improvement Co. against the United States on account of property taken by the United States in the Canal Zone.

There is attached hereto a letter from the Secretary of War under date of January 26, 1932, the original recommendation to Congress by the War Department, together with the report of the Senate Committee on Inter-oceanic Canals, No. 440, Seventy-second Congress, first session.

[S. Rept. No. 440, 72d Cong., 1st sess.]

The Committee on Inter-oceanic Canals, to which was referred the bill (S. 3477) for the relief of the Playa de Flor Land & Improvement Co., having considered the same, reports favorably thereon, with the recommendation that the bill pass without amendment.

This bill (S. 3477) gives jurisdiction to the Federal Court of the Canal Zone to hear and determine the rights of the Playa de Flor Land & Improvement Co. as result of the action of the Government in taking possession of lands during the construction of Panama Canal.

In the letter from the Secretary of War, Hon. Patrick J. Hurley, as of March 9, 1931, he suggests the claimants receive \$110,000 in full settlement of their claim, which represents \$50,000, the value placed on the land by General Goethals at the time of taking possession and interest at 6 percent from that date.

As an alternative to this proposition the Secretary suggests the matter be judicially determined by the Federal court of the Canal Zone.

The claimants have expressed a desire to accept the decision of the court, and this bill extends only authorization to the court to determine the values.

WAR DEPARTMENT,
Washington, March 9, 1931.

Mr. WILLIAM E. WEIGLE,
Washington, D. C.

DEAR MR. WEIGLE: I have received from the Governor of the Panama Canal his report of the negotiations had with yourself and Mr. C. P. Fairman in reference to the settlement of the claim of the Playa de Flor Land & Improvement Co. for the value of land in the Fort Sherman Military Reservation, Canal Zone, taken over by the United States, as authorized in my letter addressed to you under date of March 4, 1930. In that letter it was stated that any agreement reached would be subject to the approval of the Secretary of War and contingent upon the appropriation by Congress of the moneys necessary to pay the amount agreed upon.

In his report the Governor stated that you proposed under date of February 10, 1931, to settle the claim by the payment within 60 days of \$341,822.50, and that, under date of February 18, 1931, the proposition was made by Mr. Fairman for final settlement of all the rights claimed by the company upon the payment of \$224,411.25, conditional on the deposit of this amount in the registry of the District court of the Canal Zone within 60 days from February 18, 1931.

Both of these amounts are considered excessive. However, I am willing to recommend to Congress the appropriation of a sufficient amount to pay \$50,000, plus interest from February 1, 1912, to the date of payment, or not later than the end of the month in which the appropriation is made by Congress, the amount to be paid into the District Court of the Canal Zone, which would then have the right to determine the amount payable to the various claimants. The amount of this offer is the amount which Governor Goethals proposed in the early part of 1913 to obtain for the settlement of all equities covered by this claim, and also for certain other rights claimed in the property in question. To this sum will be added interest at the rate of 6 percent per year until settlement is effected.

If settlement as proposed is satisfactory to you, the total amount payable, if the appropriation is made in February 1932, will be approximately \$110,000. If settlement on the basis proposed is satisfactory to the claimants, proper steps will be taken to secure the appropriation at the next session of Congress.

Very truly yours,

PATRICK J. HURLEY,
Secretary of War.

WAR DEPARTMENT,
Washington, November 16, 1931.

Mr. WILLIAM E. WEIGLE,
Washington, D. C.

DEAR MR. WEIGLE: The receipt is acknowledged of your letter of November 7, 1931, in which you state that you have concluded that the best interests of the claimants for the value of the land belonging to the Playa de Flor Land & Improvement Co. in the Fort Sherman Military Reservation, C. Z., taken over by the United States, will be conserved by declining the offer of \$110,000 in complete settlement of the claim, and by accepting the suggestion that recommendation be made for congressional action conferring jurisdiction upon the District Court of the Canal Zone to hear and determine the rights of the claimants.

In view of this conclusion, action will be taken at the proper time to recommend to the next Congress, in conformity with the last paragraph of my letter of April 17, 1931, the passage of an act which will authorize the District Court of the

Canal Zone to hear and finally determine the questions involved and the amount payable by the United States for the land which was taken over from the Playa de Flor Land & Improvement Co.

Yours very truly,

PATRICK J. HURLEY,
Secretary of War.

WAR DEPARTMENT,
Washington, January 26, 1932.

HON. THOMAS D. SCHALL,
*Chairman, Committee on Inter-oceanic Canals,
United States Senate, Washington, D. C.*

DEAR SENATOR SCHALL: I have the honor to transmit herewith a draft of bill for the relief of the Playa de Flor Land & Improvement Co., an association said to be a joint-stock company organized under the laws of the Canal Zone, with the recommendation that the same be enacted into law.

The claim of the Playa de Flor Land & Improvement Co. is for compensation for 3,276.9 acres of land lying on the west side of Limon Bay in the Canal Zone, and \$28,264 for improvements on that land. The land in question was taken by the United States for fortification purposes on February 1, 1912. This claim is based upon alleged recorded titles held by Feliciano Villalobos, Pedro J. Cerezo, and Jose Villalobos, and a concession alleged to have been made to Ricardo de la Parra; and upon occupation rights alleged to have accrued to the heirs of Feliciano Villalobos, Pedro J. Cerezo, and Jose Villalobos by reason of adverse possession over periods of 10 years for ordinary prescription, and 30 years for extraordinary prescription.

Under the Executive order of December 5, 1912, in exercise of the power given in section 3 of the Panama Canal Act, the United States Government appropriated all private lands in the Canal Zone including those of the Panama Railroad Co. The claim of the Playa de Flor Co. was filed before the joint commission which adjudicated damages for lands and improvements taken in the Canal Zone. But it was withdrawn by the company's attorney, Mr. C. P. Fairman, on February 25 and 26, 1920. It was stated that the withdrawal was made because the commission was found by article 6 of the treaty of 1903 between Panama and the United States to determine damages for lands taken on the basis of their value in 1903. Cases begun in the courts of the Canal Zone in 1909 and 1912 were then consolidated for trial of the title to these lands in the District Court of the Canal Zone. District Judge Martin heard these cases in February 1928, and rendered an opinion on January 12, 1929, holding that the title was in the Government of the United States, and the Panama Railroad Co. would therefore be dismissed from the case. Hence it is the United States Government against which the claim is pending rather than the Panama Railroad Co.

In 1912 the United States recognized an equity to about 40 fanegadas as residing in the Playa de Flor Co., a possible equity to other lands growing out of long occupation by squatters, and a right to payment for services rendered in clearing up the old De la Parra claim which, it was believed at that time, might be a cloud upon the title of the Panama Railroad Co. All of these rights had been consolidated in the Playa de Flor Co. and General Goethals tried to effect a settlement of the claims based thereon by transfer to the Playa de Flor Co. of a portion of land with a frontage of 4,000 linear feet on Limon Bay, and such depth as would be equivalent to 50 fanegadas or 78.9 acres. This settlement was, however, made impracticable when the Executive order referred to above was issued. The representatives of the Canal and railroad believed then, and believe now, that the proposed settlement was liberal to the Playa de Flor claimants.

Col. George W. Goethals at a hearing before the Subcommittee on Appropriations of the House of Representatives on January 16, 1913, advocated the appropriation of \$50,000 for the purchase of the 79 acres of water front which he had previously proposed to transfer to the claimants in lieu of all of their claimed rights. This sum undoubtedly was intended by Colonel Goethals to cover in equity the whole claim of the Playa de Flor Land & Improvement Co., and also the payment of some small squatters' claims. He stated in the same hearings that he thought the company would probably ask for \$100,000, instead of \$50,000. This proposed settlement was abandoned because the claim was then pending in court, and a joint commission was about to be convened which would have jurisdiction thereof.

In the latter part of 1923, and also in 1927, attempts were made to settle the claim by the payment of an amount which the Panama Canal authorities considered reasonable. No agreement could be reached with the claimants.

Under date of March 4, 1930, the Secretary of War addressed a letter to Mr. William E. Weigle, representing the claimants, suggesting that some one duly equipped with valid credentials to represent the claimants negotiate with the Panama Canal for settlement of the claim. In this letter it was stated that any agreement reached would be subject to the approval of the Secretary of War and be contingent upon the appropriation by Congress of the moneys necessary to pay the agreed-upon amount. Since that time negotiations have been in progress for the settlement of the claim. The representatives of the claimants proposed that the claim be settled by the payment within 60 days of \$341,822.50. A short time thereafter they offered to accept as full compensation for all the rights claimed by the company the sum of \$224,811.25, conditional on the deposit of this amount in the registry of the District Court of the Canal Zone within 60 days from February 18, 1931.

The Governor of the Panama Canal considered this amount excessive and recommended that the Secretary of War offer to recommend to Congress the appropriation of a sufficient amount to pay \$50,000 plus interest from February 1, 1912, to the date of payment, which at this time would make a total of approximately \$110,000.

Concurring in the recommendation of the Governor, I wrote to Mr. William E. Weigle, representative of the company, under date of March 9, 1931, that I considered excessive both of the amounts claimed by them, and then stated that "I am willing to recommend to Congress the appropriation of a sufficient amount to pay \$50,000, plus interest from February 1, 1912, to the date of payment, or not later than the end of the month in which the appropriation is made by Congress, the amount to be paid into the District Court of the Canal Zone, which would then have the right to determine the amounts payable to the various claimants." Mr. Weigle was advised that the amount payable at this time would be approximately \$110,000.

This offer for settlement not being acceptable, I then concurred in the recommendation of the Governor, and advised the representative of the claimants that I would recommend to the Congress the passage of an act which would authorize the District Court of the Canal Zone to hear and finally determine the questions involved and the amount payable by the United States for the land which was taken over from the Playa de Flor Land & Improvement Co.

It is very desirable to finally dispose of this claim. The method proposed for its settlement is satisfactory to the claimants, and it is, therefore, recommended that jurisdiction be conferred upon the District Court of the Canal Zone to hear and finally determine the questions involved.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

EXHIBIT C

[PRIVATE—No. 234—76TH CONGRESS]

[CHAPTER 657—1ST SESSION]

[H. R. 7132]

AN ACT To amend an Act entitled "An Act for the relief of the Playa de Flor Land and Improvement Company", approved May 21, 1934

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act for the relief of the Playa de Flor Land and Improvement Company, approved May 21, 1934", be, and the same is hereby, amended by adding the following:

"SEC. 2. All competent testimony, exhibits, or other evidence heretofore admitted in evidence in any proceeding heretofore had under authority of this Act and all competent testimony, exhibits, or other evidence heretofore admitted in evidence in the cases docketed in said court as numbers 1 and 3, and, respectively, entitled 'Playa de Flor Land and Improvement Company, a joint-stock corporation, Plaintiff vs. Eusebia Diaz, et al., and The Panama Railroad Company, a corporation, defendants', and 'The Panama Railroad Company, a corporation, Plaintiff vs. J. H. Stilson, W. Andrews, and C. P. Fairman, as the successors in

interest and estate to Eufracis C. De Villalobos, et al., defendants', shall be received in evidence for the same purpose as heretofore admitted in any suit brought or to be brought under authority of this Act, as amended: *Provided*, That such evidence shall be subject, however, to any objection that the United States may interpose as to relevancy, materiality, or competency other than the objection of the witnesses not being produced in person."

Approved, August 10, 1939.

[Rept. No. 1357, 76th Cong., 1st sess.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7132) to amend an act entitled "An act for the relief of the Playa de Flor Land & Improvement Co.," approved May 21, 1934, after consideration, report the same favorably to the House with amendments with the recommendation that as so amended the bill do pass.

The committee amendments are as follows:

Page 1, line 7, after the word "All" insert "competent".

Page 1, line 9, after the word "all" insert "competent".

As the Committee on the Judiciary is advised, the facts in this matter briefly are these:

The Playa de Flor Land & Improvement Co. has a claim for the value of certain land in the Canal Zone taken at the time of the construction of the Panama Canal. Disposition of the claim was delayed by a question of title to part of the land.

A suit on the claim was brought against the Panama Railroad Company and tried in 1928 in the District Court of the Canal Zone. After taking evidence, the court held that the claim properly was against the United States, for the reason that whatever right the railroad company had in the land had been ceded to the United States.

Authority was then granted by Congress by an enabling act approved in 1934 for the claimants to bring suit against the United States in the district court of the Canal Zone. When this suit came on for trial it was found that all the plaintiff's witnesses who testified in the former suit except one were dead, and that one was out of the jurisdiction of the court.

It is now sought by the reported bill to amend the act of 1934 to permit the transcript of the competent evidence, both direct and cross, taken in the suit against the railroad company to be admitted in evidence in the case brought against the United States under that act.

For a more detailed statement of the claim of the Playa de Flor Co. there is appended hereto a communication from the War Department addressed to the Senate Committee on Inter-oceanic Canals when the jurisdictional act was originally under consideration in the Seventy-second Congress.

WAR DEPARTMENT,
Washington, January 26, 1932.

HON. THOMAS D. SCHALL,
*Chairman, Committee on Inter-oceanic Canals,
United States Senate, Washington, D. C.*

DEAR SENATOR SCHALL: I have the honor to transmit herewith a draft of bill for the relief of the Playa de Flor Land & Improvement Co., an association said to be a joint-stock company organized under the laws of the Canal Zone, with the recommendation that the same be enacted into law.

The claim of the Playa de Flor Land & Improvement Co. is for compensation for 3,276.9 acres of land lying on the west side of Limon Bay in the Canal Zone, and \$28,264 for improvements on that land. The land in question was taken by the United States for fortification purposes on February 1, 1912. This claim is based upon alleged recorded titles held by Feliciano Villalobos, Pedro J. Cerezo, and Jose Villalobos, and a concession alleged to have been made to Ricardo de la Parra, and upon occupation rights alleged to have accrued to the heirs of Feliciano Villalobos, Pedro J. Cerezo, and Jose Villalobos by reason of adverse possession over periods of 10 years for ordinary prescription, and 30 years for extraordinary prescription.

Under the Executive order of December 5, 1912, in exercise of the power given in section 3 of the Panama Canal Act, the United States Government appropriated all private lands in the Canal Zone including those of the Panama Railroad Co. The claim of the Playa de Flor Co. was filed before the joint commission which adjudicated damages for lands and improvements taken in the Canal Zone.

But it was withdrawn by the company's attorney, Mr. C. P. Fairman, on February 25 and 26, 1920. It was stated that the withdrawal was made because the commission was bound by article 6 of the treaty of 1903 between Panama and the United States to determine damages for lands taken on the basis of their value in 1903. Cases begun in the courts of the Canal Zone in 1909 and 1912 were then consolidated for trial of the title to these lands in the district court of the Canal Zone. District Judge Martin heard these cases in February 1928, and rendered an opinion on January 12, 1929, holding that the title was in the Government of the United States, and the Panama Railroad Co. would therefore be dismissed from the case. Hence it is the United States Government against which the claim is pending rather than the Panama Railroad Co.

In 1912 the United States recognized an equity to about 40 fanegadas as residing in the Playa de Flor Co., a possible equity to other lands growing out of long occupation by squatters, and a right to payment for services rendered in clearing up the old De la Parra claim which, it was believed at that time, might be a cloud upon the title of the Panama Railroad Company. All of these rights had been consolidated in the Playa de Flor Co. and General Goethals tried to effect a settlement of the claims based thereon by transfer to the Playa de Flor Co. of a portion of land with a frontage of 4,000 linear feet on Limon Bay, and such depth as would be equivalent to 50 fanegadas or 78.9 acres. This settlement was, however, made impracticable when the Executive order referred to above was issued. The representatives of the Canal and railroad believed then, and believe now, that the proposed settlement was liberal to the Playa de Flor claimants.

Col. George W. Goethals at a hearing before the Subcommittee on Appropriations of the House of Representatives on January 16, 1913, advocated the appropriation of \$50,000 for the purchase of the 79 acres of water front which he had previously proposed to transfer to the claimants in lieu of all of their claimed rights. This sum undoubtedly was intended by Colonel Goethals to cover in equity the whole claim of the Playa de Flor Land & Improvement Co., and also the payment of some small squatters' claims. He stated in the same hearings that he thought the company would probably ask for \$100,000, instead of \$50,000. This proposed settlement was abandoned because the claim was then pending in court, and a joint commission was about to be convened which would have jurisdiction thereof.

In the latter part of 1923, and also in 1927, attempts were made to settle the claim by the payment of an amount which the Panama Canal authorities considered reasonable. No agreement could be reached with the claimants.

Under date of March 4, 1930, the Secretary of War addressed a letter to Mr. William E. Weigle, representing the claimants, suggesting that someone duly equipped with valid credentials to represent the claimants negotiate with the Panama Canal for settlement of the claim. In this letter it was stated that any agreement reached would be subject to the approval of the Secretary of War and be contingent upon the appropriation by Congress of the moneys necessary to pay the agreed-upon amount. Since that time negotiations have been in progress for the settlement of the claim. The representatives of the claimants proposed that the claim be settled by the payment within 60 days of \$341,822.50. A short time thereafter they offered to accept as full compensation for all the rights claimed by the company the sum of \$224,811.25, conditional on the deposit of this amount in the registry of the District Court of the Canal Zone within 60 days from February 18, 1931.

The Governor of the Panama Canal considered this amount excessive and recommended that the Secretary of War offer to recommend to Congress the appropriation of a sufficient amount to pay \$50,000 plus interest from February 1, 1912, to the date of payment, which at this time would make a total of approximately \$110,000.

Concurring in the recommendation of the Governor, I wrote to Mr. William E. Weigle, representative of the company, under date of March 9, 1931, that I considered excessive both of the amounts claimed by them, and then stated that "I am willing to recommend to Congress the appropriation of a sufficient amount to pay \$50,000, plus interest from February 1, 1912, to the date of payment, or not later than the end of the month in which the appropriation is made by Congress, the amount to be paid into the District Court of the Canal Zone, which would then have the right to determine the amounts payable to the various claimants." Mr. Weigle was advised that the amount payable at this time would be approximately \$110,000.

This offer for settlement not being acceptable, I then concurred in the recommendation of the Governor, and advised the representative of the claimants

that I would recommend to the Congress the passage of an act which would authorize the district court of the Canal Zone to hear and finally determine the questions involved and the amount payable by the United States for the land which was taken over from the Playa de Flor Land & Improvement Co.

It is very desirable to finally dispose of this claim. The method proposed for its settlement is satisfactory to the claimants, and it is, therefore, recommended that jurisdiction be conferred upon the district court of the Canal Zone to hear and finally determine the questions involved.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

WAR DEPARTMENT,
Washington, September, 26, 1941.

The Honorable DAN R. MCGEHEE,
*Chairman, Committee on Claims,
House of Representatives, Washington, D. C.*

MY DEAR MR. MCGEHEE: Reference is made to your letter of August 4, addressed to the Secretary of the Navy and requesting a report on the bill H. R. 5295 for the relief of the estate of Romano Emiliani. In accordance with the suggestion contained in the last paragraph thereof, your letter was forwarded to me by the office of the Secretary of the Navy as a matter under my cognizance.

The provisions of the bill H. R. 5295 are identical to the provisions of the bill S. 696 for the relief of the estate of Romano Emiliani, which bill was introduced in the Senate on January 31, 1941, by Senator Clark of Missouri. Following the introduction of the bill S. 696 the chairman of the Senate Committee on Inter-oceanic Canals requested a report on the bill by this office and, after consideration of a full report on the matter by the Governor of the Panama Canal, a report was submitted to the Senate committee in which report the Emiliani claims generally and the provisions of the bill S. 696 in relation thereto were fully discussed. Inasmuch as the provisions of the bills S. 696 and H. R. 5295 are identical, the report to the Senate committee on the former necessarily reflects my views concerning the provisions of the bill H. R. 5295 now pending before your committee and the substance thereof is incorporated in this letter for the consideration of your committee.

The bill in question, as disclosed on its face, is designed to authorize a redetermination of the claim of Romano Emiliani for land in the Canal Zone to which Emiliani claimed title, which land was taken by the United States in 1912 as necessary to the opening, maintenance, operation and protection of the Panama Canal and the sanitation and protection of the Canal Zone. On this claim Romano Emiliani was awarded \$9,250 by the Joint Land Commission and received payment from the United States in the sum of \$48,718 for the improvements on the land.

The acquisition by the United States of title to land in the Canal Zone and the payment of compensation to the owners of the land taken are governed by the following provisions of the 1903 treaty between the United States and Panama and section 3 of the Panama Canal Act of August 24, 1912:

Article II of the 1903 treaty between the United States and Panama provides, in part, as follows:

"The Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said Canal of the width of 10 miles extending to the distance of 5 miles on each side of the center line of the route of the Canal to be constructed: * * *"

Article VI of the treaty provides for the payment of compensation to private owners of land taken in the Canal Zone as follows:

"The grants herein contained shall in no manner invalidate the titles or rights of private landholders or owners of private property in the said zone or in or to any of the lands or waters granted to the United States by the provisions of any article of this treaty, nor shall they interfere with the rights-of-way over the public roads passing through the said zone or over any of the said lands or waters unless said rights-of-way or private rights shall conflict with rights herein granted to the United States in which case the rights of the United States shall be superior. All damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of

the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation, and protection herein provided for shall be appraised and settled by a joint commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damages shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said Canal or the Panama Railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed, or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention."

Section 3 of the Panama Canal Act of August 24, 1912 (37 Stat. 561) implements articles II and VI of the 1903 treaty as follows:

"The President is authorized to declare by Executive order that all land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants. Upon failure to secure by agreement title to any such parcel of land or land under water the adverse claim or occupancy shall be disposed of and title thereto secured in the United States and compensation therefor fixed and paid in the manner provided in the treaty with the Republic of Panama dated November 18, 1903, or such modification of that treaty as may be made."

Pursuant to the authority conferred on him by section 3 of the Panama Canal Act, quoted above, on December 5, 1912, President Taft issued the following Executive order:

"By virtue of the authority vested in me by the act of Congress entitled 'An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone,' approved August 24, 1912, I hereby declare that all land and land under water within the limits of the Canal Zone are necessary for the construction, maintenance, operation, protection, and sanitation of the Panama Canal, and the Chairman of the Isthmian Canal Commission is hereby directed to take possession, on behalf of the United States, of all such land and land under water; and he may extinguish, by agreement when practicable, all claims and titles of adverse claimants to the occupancy of said land and land under water."

Pursuant to the Executive order of December 5, 1912, the Isthmian Canal Commission, acting for and on behalf of the United States Government, took over all of the land in the Canal Zone including 1,901.64 acres on the shores of Manzanillo Bay, the title to which land was claimed by one Romano Emiliani, a native of Italy, who settled in Colon, Republic of Panama, near the close of the nineteenth century.

The land claimed by Emiliani on Manzanillo Bay was divided into two tracts, one tract of an area of 1,378 acres, known as the Coco Solo or Margarita tract, and the other tract of an area of 523.64 acres, known as El Potrero. The two tracts were separated by the Escondido River and by a wide swamp lying north of the river. A portion of these lands lay within the area which had been adjudicated to the Panama Railroad Co. by the Government of New Granada in 1866. Another portion of the lands lay within the public domain at the time of the treaty, and a third portion of the land was manglar swamp or tidal land.

The title to all of the land claimed by Romano Emiliani was brought into question in an action commenced in the Circuit Court, Third Judicial District, Canal Zone, on March 6, 1912, by the Panama Railroad Co. against A. S. Mendez and others, including Romano Emiliani, in which action the Panama Railroad Co. asserted its title to certain lands, including Coco Solo and El Potrero.

On August 10, 1914, nearly 2 years after the promulgation of the Executive order of December 5, 1912, quoted above, declaring all lands in the Canal Zone necessary for Canal purposes and directing the Chairman of the Isthmian Canal Commission to take possession of all such land, Romano Emiliani, by his attorney, filed an answer in the case of *Panama Railroad Company v. Mendez* in which Emiliani prayed that title to Coco Solo and El Potrero be established and confirmed in him.

On December 22, 1914, Emiliani filed before the Joint Land Commission, which had been constituted pursuant to articles VI and XV of the 1903 treaty, a claim for compensation in the sum of \$367,113 for the lands of Coco Solo and improvements thereon, which claim was docketed as claim No. 3063. On December 23, 1914, Emiliani filed a claim for compensation in the sum of \$59,505 for the lands

of El Potrero and improvements thereon, which claim was docketed as claim No. 3088 in the Joint Land Commission.

Although the Emiliani claims for El Potrero and Coco Solo were filed with the Joint Land Commission in December 1914, actual possession of the land was not taken by the United States until June 1, 1916, after notice to Romano Emiliani, dated April 24, 1916, that the lands would be taken over 30 days from that date in accordance with the provisions of the Executive order of December 5, 1912.

As shown above, the Emiliani claims filed with the Joint Land Commission originally included claims for improvements on the land. However, since under the applicable local law the ownership of the improvements on the land was not considered as an incident of the ownership of the land so that improvements and land could be in diverse ownership, and since there was no doubt of the ownership of the improvements as distinguished from the land, the parties agreed on a settlement of the claim for improvements for the sum of \$48,718. Accordingly, the parts of the claims before the Joint Land Commission which dealt with improvements on the lands were dismissed on the claimant's motion filed May 14, 1918, and granted July 2, 1918.

In its award on the Emiliani claims dated July 2, 1918 (published in the Panama Canal Record, vol. II, p. 490), the Joint Land Commission found:

(a) That the tidal swamp lands, prior to the 1903 treaty, were the property of the Republic of Panama and imprescriptible, that they were acquired by the United States by virtue of the 1903 treaty, and that Emiliani had no title and hence was not entitled to compensation therefor;

(b) That the waste or public lands (all of which lay outside the tract adjudicated to the Panama Railroad Co.), prior to the 1903 treaty, belonged to the Republic of Panama, were imprescriptible, passed to the United States by virtue of the 1903 treaty, and the claimant was entitled to no compensation for such lands;

(c) That Emiliani had established title by prescription to 264.2 hectares (652.84 acres) of the Coco Solo and El Potrero tracts within the tract which had been adjudicated to the Panama Railroad Co. Touching the value of these lands the Commission found:

"With regard to the value of the lands, the Commission has carefully considered the evidence presented by counsel for both sides, as well as other evidence of which the Commission must take judicial notice, and it is our opinion that the 264.2 hectares belonging to Romano Emiliani, each tract of land being appraised at different prices according to its location and character, have a value of \$9,250 which is the amount for which an award should be made."

On July 30, 1918, Romano Emiliani, by his attorney, filed a protest and motion for reconsideration with the Joint Land Commission. No new evidence was submitted or indicated in the protest and motion for reconsideration, but the eleventh paragraph thereof referred to the action involving the lands then pending in the District Court of the Canal Zone as follows:

"Eleventh. That in view of the action pending in the District Court of the Canal Zone, wherein the title to the lands of Coco Solo and El Potrero is involved, and said Romano Emiliani is unable to accept or receive the amount awarded him for the said 264.2 hectares, without being estopped from further claim or action for the remaining portion of his lands consisting of 363.84 hectares."

The protest and motion for reconsideration was denied by the Joint Land Commission, the minutes of the meeting of the Joint Commission held on August 2, 1918, containing the following entry with respect thereto:

"There was submitted to the Commission the protest and motion for reconsideration filed by Mr. C. P. Fairman in the matter of the claims of Romano Emiliani, dockets Nos. 3063 and 3088. After considerable discussion this motion for reconsideration was denied and the Secretary was so directed to inform the interested parties."

On January 8, 1919, Romano Emiliani notified the Governor of the Panama Canal of his refusal to accept the award of the Commission.

After December 15, 1912, the date of the Executive order declaring all lands within the Canal Zone necessary for the construction, maintenance, operation, protection, and sanitation of the Panama Canal and directing the Chairman of the Isthmian Canal Commission to take possession of such lands on behalf of the United States, the Panama Railroad Co. ceased to press its suit commenced March 6, 1912, involving title to the lands in question, since the effect of the Executive order, under the 1903 treaty, was to vest that title in the United States regardless of its prior ownership. Manifestly, after the date of that Executive order the United States was a necessary party to any suit involving title to land in the Canal Zone and in an opinion filed December 12, 1932, in two similar cases

(*Cerezo v. Diaz and Panama Railroad Company v. Villalobos*) the District Court for the Canal Zone so held.

However, notwithstanding the issuance of the Executive order of December 5, 1912, and notwithstanding that under the 1903 treaty title to the lands was vested in the United States after the issuance of that Executive order, on August 10, 1914, Romano Emiliani filed his amended answer in the action of the *Panama Railroad v. Mendez* in which he sought to establish affirmatively his title to the land. Subsequently, on August 25, 1916, the Panama Railroad suggested to the court that by virtue of the Executive order of December 5, 1912, the title to the land in dispute had passed to the United States and that therefore none of the parties to the suit could longer claim title. On May 17, 1920, the Panama Railroad petitioned for and was granted permission to file a disclaimer of interest on the ground that the land in controversy had been taken over by the United States. Thereafter no showing was made to the court in opposition to the Emiliani claims on the grounds upon which the Joint Land Commission based its holding that Emiliani had failed to establish title to 1,248.8 acres of the land claimed by him in the two tracts, and on February 23, 1921, on the motion of Romano Emiliani for a decree of default, a final decree was entered in which it was held that "the title, estate and beneficial interest of the said Romano Emiliani, in and to the above-described real estate, and to every part thereof, is herewith established and confirmed."

On June 14, 1925, Romano Emiliani, Sr., died in Colon, Republic of Panama, leaving a will executed by him in Colon on January 25, 1919, in which he named as the sole and universal heir to all of his property Rosina Emiliani, his wife, and, as his substitute heirs his children, Romano Emiliani, Jr., and Julia Isabel Emiliani. The will also left a one-eighth part of the property of the estate to Nicolas Amador Emiliani, a step child, but no mention was made of Regina Clelia Stevenson, another daughter of the testator.

On June 30, 1925, Romano Emiliani's will was offered for probate in the office of the judge of the First Circuit Court, Colon, Republic of Panama, and on that day the said judge declared the will opened and declared the heirs as stated in the will, and on July 3, 1925, declared that Nicolas Amador Emiliani was a legatee under the will.

On October 24, 1925, Romano Emiliani, Jr., filed in the United States District Court for the District of the Canal Zone an application for letters of administration with the will annexed upon the estate of Romano Emiliani, Sr., in the Canal Zone, the estate being described as two certain tracts of land in the Canal Zone known as El Potrero and Coco Solo. After a hearing on November 9, 1925, the court directed issuance of letters of administration with the will annexed to Romano Emiliani, Jr., and letters were issued on that day.

Subsequently, in an action to contest the will brought in the District Court for the Canal Zone the court held that Regina Clelia Stevenson, the daughter not mentioned in the will, was a forced heir of Romano Emiliani, Sr., entitled to share in his estate.

By an order dated August 21, 1939, the administration of the estate of Romano Emiliani, Sr., was closed, the administrators were discharged and the case was stricken from the docket, it appearing that no claims had been filed, that the estate had no property in the Canal Zone except a claim for lands situated in the Canal Zone, and that the administrators were performing no functions or duties as such.

Since the death of Emiliani, Sr., efforts to revive the claims for compensation for El Potrero and Coco Solo have been made intermittently, the amount of the claims having grown, according to the last public statement by the attorney for the claimants, from \$426,618 for the land and improvements to approximately \$3,000,000 for the land alone. In the face of these attempted revivals of the claims the United States has consistently taken the position that the claims for this land were finally disposed of by the award of the Joint Land Commission pursuant to the 1903 treaty and section 3 of the Panama Canal Act, and that the matter is closed so far as the Government is concerned, except that the accounting officers in the Canal Zone are ready to pay the amount of the award to the parties entitled thereto when they are willing to accept it.

In view of the history of the Emiliani claims, hereinbefore summarized, it is submitted that there is no legal or equitable basis for the reopening of these claims and that the bill under consideration should not be enacted.

In its present form it appears that the bill under consideration, if enacted, would:

- (a) Confer jurisdiction upon either the Court of Claims or the United States District Court for the Canal Zone to hear and determine the Emiliani claims for the taking of approximately 1,900 acres of land in the Canal Zone, for which, the bill recites, "no compensation has ever been paid or allowed the said Romano Emiliani or his heirs or legal representatives."
- (b) Direct the court hearing the claim to—
 - (1) receive and consider any evidence, oral, properly recorded, or documentary that may have been received by the Joint Land Commission and now on record with the State Department or the Panama Canal pertaining either to the extent of the taking or the value of the lands taken;
 - (2) receive and consider any decision by the District Court for the Canal Zone as to the ownership of such lands;
 - (3) evaluate the lands, "giving due weight to the use later made thereof"; and
 - (4) base its award upon the value of the land as of the time of taking and not upon any value alleged to have prevailed as of the date of the 1903 treaty.

At the outset, any proponent of the bill must overcome the fundamental objection to any legislation of this character; namely, that at some point there must be an end to litigation and a claim must be regarded as finally settled. Ordinarily a person whose land is expropriated by the United States has recourse to the courts of the United States if efforts to agree administratively on the amount of fair compensation prove fruitless. However, in the negotiations with the Republic of Panama for the acquisition of the Canal Zone it appeared that in fairness to the owners of private titles some joint tribunal composed of nationals of both the United States and the Republic of Panama should hear and determine claims for compensation for the taking of the land. Accordingly, articles VI and XV of the 1903 treaty between the two countries provided in detail for the creation of such a joint commission to which claims for compensation should be submitted, with equal representation of both countries, and it was further provided that the decisions of the Commission "shall be final."

Subsequently, in the enactment of the Panama Canal Act, of August 24, 1912, the Congress manifested no intention to depart from the treaty provisions, section 3, quoted above, providing that, upon failure to secure title by agreement to land in the Canal Zone declared by the President to be necessary for the construction, maintenance, operation, etc., of the Canal, the adverse claim should be disposed of, title secured in the United States and "compensation therefor fixed and paid in the manner provided in the treaty with the Republic of Panama dated November 18, 1903."

As shown in the summary of facts, set out above, Romano Emiliani availed himself of the means provided by the treaty for settlement of his claim and submitted his claim to the Joint Land Commission. The Commission, after a full hearing, found that Emiliani had title to part of the land and did not have title to another part of the land for which compensation was claimed and an award was entered in favor of Emiliani in the sum of \$9,250 for all of the land to which Emiliani had title. Under the terms of the treaty that award is final.

The wisdom of the provision of the treaty for final determination of these claims by the Joint Land Commission is readily apparent in the consideration of the provisions of this bill in view of the manifest difficulty of obtaining satisfactory evidence concerning a claim of title based on adverse possession 27 years after the claim was first presented to the Joint Commission, and nearly 50 years after that possession is alleged to have commenced. Furthermore, the bill as now drafted, while providing for the admission of evidence received by the Joint Land Commission pertaining to the extent of taking or to the value of the lands taken does not provide for admission of evidence received by the Joint Land Commission on the issue of title, thereby closing off the only source of available evidence on this vital element of the claim.

Another factor which should be taken into account in the consideration of this bill to provide for the reopening of a claim which, under the treaty, was finally settled by the award of the Joint Land Commission, is the probable effect of the enactment of the bill on other similar claims now supposed to be finally settled. The final report of the Joint Land Commission dated March 10, 1920, discloses that 3,598 claims for \$20,660,371.19 were filed with the Commission. The estate of Romano Emiliani is dissatisfied with the award of the Commission and for that reason seeks to reopen the proceedings on the claim, but the final report of the Commission also shows that in 879 claims for \$11,502,943.66, 213 awards for \$1,568,581.49 were made, and that claims for \$3,263,063.13 were dismissed for

various reasons such as lack of jurisdiction, lack of evidence, or because of duplication, or on claimant's motion. These figures clearly indicate the probability that enactment of this bill would lead to a flood of applications for legislative authority to review and revise the findings and awards of the Joint Commission. Should this bill be enacted the applications of other disappointed claimants for similar relief could not be otherwise than a serious problem to the Congress since there is no ground for singling out the Emiliani estate as worthy of preferential treatment not accorded to other claimants while to accede to the request for legislative relief in each case would completely nullify the work of the Joint Commission over a 7-year period and throw open for redetermination every contested claim heard and determined by that Commission pursuant to the treaty.

The record of the handling of the Emiliani claims discloses that the action of the Joint Commission was taken advisedly after a full and a fair hearing and there is no indication whatever of any overreaching of the claimants on the part of the United States or the Commission. Therefore, in view of the finality attached to the decision by the 1903 Treaty and in view of the consequences of the enactment of this bill on other claims determined by the Commission without giving the claimants the full relief sought, it is urgently recommended that this bill be given no further consideration.

Furthermore, in addition to the fundamental objection to the bill as a whole, hereinabove discussed, it is desired to point out certain other defects in the structure of the bill which are considered to render the bill objectionable. Primarily the bill is considered to be defective in that it does not clearly provide for adjudication of the issue of title to the land, appearing to assume that title to all of the one-thousand-nine-hundred-odd acres was in Emiliani when the land was taken and that the only question in issue is that of value. As a matter of fact, the issue of Emiliani's title is fundamental in the claim, the title having been in dispute at the time the land was taken by the United States and the Joint Land Commission having determined that Emiliani had no title to any but 264.2 hectares of the land in question. Notwithstanding these facts, section 1 of the bill does not refer directly to the issue of title, authorizing the court to hear and determine "the claim * * * for just compensation for the taking * * * of approximately 1,900 acres of land * * * no compensation for the taking of said lands * * * ever having been paid or allowed the said Romano Emiliani or his heirs or legal representatives." It is probable that a court would construe the authorization to hear and determine the claim as an authorization to determine the title as an essential element of the claim, but the language of section 1 strongly implies that there is no issue of title and that the sole issue is that of the amount of compensation payable.

Such implication is even stronger in section 2 of the bill in which the court is directed to receive and consider evidence received by the Joint Land Commission "pertaining either to the extent of taking or to the value of the lands taken, as well as any decision by the District Court for the Canal Zone as to the ownership of the lands."

It is notable that the court is not directed to receive and consider evidence which was received by the Joint Land Commission pertaining to the ownership of the lands, that is, bearing on the issue of title. On that issue the court is directed to "receive and consider * * * any decision of the District Court for the Canal Zone as to the ownership of the lands" which, without doubt, refers to the decision of the district court in the action brought by the Panama Railroad against Emiliani and others, to which the United States was not a party and was not represented in any way and in which the decree was entered on an application for a default decree without any showing having been made in opposition to the Emiliani claims.

Furthermore, following the direction to the court to receive and consider any decision of the District Court for the Canal Zone as to the ownership of the lands the bill goes on to direct the court to evaluate the lands on the basis therein prescribed without any qualification which would limit the evaluation to the lands to which the estate of Emiliani may be able to show title in Romano Emiliani at the time title was taken by the United States.

Viewing the provisions of the bill as a whole it appears to be practically certain that in the event of the enactment of the bill in its present form the Government would be confronted with the contention that the title of Romano Emiliani had been legislatively established and that the issue of title was not open for trial in any action brought pursuant to the authorization contained in the act.

In view of that probability and in view of the fact that the issue of title is basic in the Emiliani claims it is submitted that the bill is defective in that it fails to provide clearly for the trial of the issue of title and in that it fails to negative any assumption of the existence of an intent to establish legislatively the existence of a title in Romano Emiliani and to confine the issue to be tried to the extent of taking and the value of the lands.

In this connection it is desired to direct attention to an inaccuracy in the language of section 1 of the bill which not only contributes to the erroneous implication that the title of Romano Emiliani is conceded but also constitutes a misleading recital of fact by way of inducement; namely, the recital in the last clause of section 1 (lines 2 to 4, p. 2 of the bill) that no compensation for the taking of the lands has ever been "paid or allowed the said Romano Emiliani or his heirs or legal representatives." As a matter of fact, as hereinbefore shown, the Joint Land Commission awarded Romano Emiliani \$9,250 for the 264.20 hectares of the land to which it found Emiliani had title and in addition, Romano Emiliani was paid \$48,718 for the improvements on the land.

Further, in this connection, it is desired to point out that the bill is defective in that it fails to direct the court to receive and consider evidence received by the Joint Land Commission on the issue of title as well as on the issues of the extent of the taking and the value of the land. In addition to the objection hereinabove discussed, that the language of section 2 of the bill implies a legislative assumption of Emiliani's title, the failure of the bill to direct the court to receive and consider evidence relating to title which was received by the Joint Land Commission would place the Government at a serious disadvantage in the trial of the claim since much of the testimony given before the Joint Land Commission would be unavailable in the absence of a specific authorization of its admission. In its present form the bill would permit introduction of evidence received by the Commission pertaining to the extent of taking or value of the lands taken, leaving evidence of title received by the Joint Commission subject to the usual rules of exclusion. Since the bill directs the court to receive and consider the decision of the District Court favorable to the claimants on the issue of title together with evidence received by the Joint Land Commission pertaining to the area taken and the value thereof, the effect of the bill would be to permit the claimants to make a prima facie case and at the same time shut out evidence received by the Commission adverse to the claimants on the issue of title, thereby, in effect, precluding the admission of evidence which would overthrow the prima facie case made by the claimants under the terms of the bill. This careful selection of issues on which evidence received by the Joint Land Commission shall be admissible is manifestly unfair to the Government.

A further defect in the bill is found in the provision directing the court to receive "any evidence, oral, properly recorded, or documentary, that may have been received by the so-called Joint Land Commission," etc., without any provision preserving certain objections to the competency of the evidence other than objections founded on the best-evidence rule. Presumably the legitimate object of this provision is to make available otherwise competent evidence which had been received by the Joint Land Commission but which is now unavailable because of the death or disappearance of witnesses who could testify thereto, and it does not appear that any legitimate end would be served by providing legislatively for the admission of any and all evidence which may have been received, properly or improperly, by the Joint Land Commission, without regard to whether such evidence otherwise would be competent or relevant.

The inclusion in the bill of the direction to the court hearing the claims to "receive and consider * * * any decision by the District Court for the Canal Zone as to the ownership of such lands" appears to be misleading, unnecessary, and undesirable. Presumably, as stated above, the phrase refers to the decree of the District Court for the Canal Zone in the case of *Panama Railroad Company v. Mendez*, purporting to establish title to the land involved in these claims in Romano Emiliani. Since the Emiliani claims are based upon the taking of title to these lands by the United States prior to the date of the decree in the *Mendez* case it is not seen how the claimants can consistently urge their claim for compensation for the taking of the land in 1912 and, at the same time assert that the decree in the *Mendez* case correctly decided that title was in Romano Emiliani in 1916, without any reference whatever to the taking of the land by the United States. Furthermore, as hereinbefore stated, it appears that the decree was manifestly erroneous and in any event not binding on the United States since the decree was entered after title had been taken by the United States in an action in which the United States was not a party and was not represented and in

which no showing was made in opposition to the claimant's motion for a default decree.

Inasmuch as the District Court for the Canal Zone would take judicial notice of the decree in the *Mendez case* and that decree could be transcribed to the Court of Claims without any special provision in an act authorizing the redetermination of these claims, it does not appear that this indirect reference in the bill to the decree in the *Mendez case* adds anything to the law which would otherwise govern consideration of that decree by the court hearing these claims, unless, as suggested above, it is intended to express or imply a legislative determination that the Mendez decree is binding on the United States notwithstanding the infirmities which inhere in that decree.

With reference to evaluation of the lands involved in the claims the bill provides as follows:

"Also the court will evaluate the lands, giving due weight to the use later made thereof, and will base its award upon the value as of the time of actual taking, and not upon any value alleged to have prevailed as of the date when the original treaty with Panama with respect to the proposed taking of lands for canal purposes was perfected."

Article VI of the 1903 treaty between the United States and Panama, after provision for the final determination of claims for damages to owners of private lands by reason of the grants contained in the treaty provides:

"The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention."

By its rule adopted March 24, 1913, the Joint Commission constituted under articles VI and XV of the 1903 treaty provided that:

"In determining the value of lands taken by the United States, the Commission must be governed by the terms of article VI, which provides:

"The appraisal of said private lands and private property and assessment of damages to them shall be based upon their value before the date of this convention."

"In the application of the treaty, the Commission will follow the principles of the Commission of 1908, which are stated in their report to have been the following:

"To hear all evidence presented bearing upon the fair value of the property to be expropriated by the United States, and upon damages thereto; to consider especially, as elements of such valuation, the extent and character of the property affected, its location, for what it is adapted or could be adapted within a reasonable time; as well as to take into account other pertinent considerations, and in determining the basis upon which damages are to be assessed, *to eliminate from consideration the effect which the building of the Canal may have had upon the value of such estates.*" (Italics supplied).

It is to be noted that the last sentence of the bill under consideration expressly nullifies the provision of the treaty with respect to the valuation of lands taken by the United States, which provision was followed by the Joint Land Commission in making awards for lands taken in the Canal Zone, in that the bill directs the court to base its award upon the value of the land as of the time of taking, giving due weight to the use later made of the lands. The theory of the 1903 treaty provision for evaluation of lands as of the time prior to the treaty is readily apparent. Through the negotiation of the treaty, the construction of the Canal, and the improvement of the land by vast expenditures of capital and labor by the United States, land at or near the entrances to the Canal was transformed from practically valueless jungle and marsh land into property which is now of tremendous value in connection with the operation of the Canal both commercially and from the standpoint of national defense. By the incorporation of the clause quoted from article VI of the treaty it was recognized and agreed by both the United States and Panama that the United States should not be obliged to pay for the land taken on a basis of valuation reflecting the post-construction value of the land, which value the land would not have had but for its acquisition by the United States in connection with the Canal enterprise. As shown by the rule of the Joint Land Commission quoted above, the rule thus evolved and incorporated in the treaty has since been followed uniformly in paying compensation for land taken in the Canal Zone and it is that rule which the bill as now drafted would supersede by requiring the court to evaluate the lands as of the time of actual taking "giving due weight to the use later made thereof," that is, as of the date of Executive order of December 5, 1912, giving due weight to the subsequent use of the land as a submarine and air base of the United States Navy, in connection with the operation of the Panama Canal.

Aside from the question of the soundness of the rule of evaluation set up in the bill under consideration as opposed to the rule agreed upon by treaty, there is for consideration a further question as to the wisdom of adopting a policy of legislatively providing for the opening and redetermination of claims for land taken in the Canal Zone on a basis of valuation different from that provided by the treaty and followed by the Joint Commission in the determination of all claims for land taken by the United States in the Canal Zone. As stated above in connection with the discussion of the desirability of throwing open for reconsideration any of these claims which were supposedly finally determined by the Joint Commission, 3,598 claims for over \$20,000,000 were filed with and disposed of by the Commission. Since, as shown above, the Commission followed the rule of valuation specified in the treaty there is no reason to presume that if this bill is enacted providing for reconsideration of the Emiliani claims on a more liberal basis of evaluation the same relief will not be sought by all other claimants who appeared before the Commission. In this situation the Congress would be forced to choose between unwarranted discrimination in favor of the Emiliani claims by refusal to consider the applications of other claimants for relief, and provision for redetermination of the entire matter of valuation of lands taken in the Canal Zone notwithstanding that these questions of valuation were once finally determined pursuant to treaty stipulations and an act of Congress.

In conclusion, the objections to the bill for the relief of the estate of Romano Emiliani, hereinabove set out at some length, may be summarized as follows:

1. Generally the bill is objectionable and not entitled to consideration by the Congress because—

(a) The claim has been finally determined by the Joint Land Commission in the manner prescribed by the 1903 treaty between the United States and Panama and by the Panama Canal Act;

(b) Full compensation for the land owned by Romano Emiliani and the improvements thereon has been paid or tendered to the claimants, the United States having paid \$48,718 to Emiliani for improvements on the land and the Joint Land Commission having awarded Emiliani \$9,250 for the land to which the Commission found Emiliani had title.

(c) Enactment of the bill would tend to indicate the existence of a policy looking toward the reopening of all claims for land in the Canal Zone once finally determined by the Joint Land Commission which, pursuant to the treaty, heard and determined over 3,500 claims for over \$20,000,000. There is no element in the Emiliani claims which would entitle these claimants to relief not afforded other claimants and there is no reason to suppose that other claimants would fail to apply for similar relief if the bill should be favorably considered.

2. More specifically the bill is considered to be objectionable in certain particular provisions and because of certain significant omissions, namely, that—

(a) The bill does not contain any specific provision for the trial of the disputed issue of Romano Emiliani's title to the land in question and, in fact, might be construed as constituting a legislative determination that Emiliani had title to all of the land, contrary to the finding of the Joint Land Commission.

(b) The bill erroneously recites, contrary to the fact (lines 2 to 4 of the second page) that no compensation for the taking of the lands by the United States has ever been "paid or allowed the said Romano Emiliani or his heirs or legal representatives."

(c) The bill directs the court hearing the claim to receive and consider evidence received by the Joint Land Commission pertaining to the extent of taking and the value of the lands but fails to provide for admission of evidence received by the Joint Land Commission on the fundamental issue of Emiliani's title, thereby, in effect, providing for the exclusion of evidence bearing on that issue.

(d) The bill does not reserve in the United States the right to object to the admission of evidence received by the Joint Land Commission on any ground other than the nonproduction of the witnesses.

(e) The bill directs the court hearing this claim against the United States to receive and consider on the issue of Emiliani's title a decision of the District Court for the Canal Zone which was entered after title admittedly had been taken by the United States in an action in which the United States was not a party, and was not represented and in which no showing was made in opposition to the claimant's application for a default decree.

(f) The bill directs the court hearing the claim to base its award upon the value of the lands to be determined by a method other than that prescribed by article VI of the 1903 convention between the United States and Panama which treaty

provision was properly followed by the Joint Land Commission in disposing of over 3,500 claims for over \$20,000,000.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

COMMENTS ON AND REPLY TO THE REPORT OF THE WAR DEPARTMENT ON H. R. 5295
FOR THE RELIEF OF THE ESTATE OF ROMANO EMILIANI

1. The report of the War Department made on this bill discloses a rather amazing lack of consideration of the merits of the matter, as well as a very careless statement of the pertinent facts. The report will be discussed as briefly as may be by paragraphs in the same order given in the report.

2. The second paragraph beginning, "The bill in question," says that the bill seeks "a redetermination" of the claim. This is incorrect. There has never been a "determination" of the claim. There was a partial consideration only of the claim by the Joint Land Commission, created under the terms of the Treaty with Panama. It later appears in the report that the award of \$9,250 covered the Commission's conclusion as to the value of only a small fraction of the land involved, and not of all the land which the District Court for the Canal Zone has concluded belonged to Emiliani. The award of \$48,718 covered the value of improvements on the land only and was accepted as such.

3, 4, 5, 6, 7, 8: These paragraphs of the report of the War Department correctly state the terms of the treaty and other provisions of law or orders having the force of law.

It will be noted in the eighth paragraph, beginning, "Pursuant to the authority," that the taking included 1,901.64 acres of land, the ownership of which was claimed by and later adjudicated as belonging to Romano Emiliani. The "award" covered a small fraction of that acreage.

9. The ninth paragraph beginning, "The land claimed by Emiliani," correctly describes the situation of the two tracts, but is in error in saying "a portion of these lands lay within the area which had been adjudicated to the Panama Railroad," and that "another portion of the lands lay within the public domain." Neither of these statements is supported by the record, and both are incorrect in fact. The Republic of Colombia did make large grants of lands to the Panama Railroad in 1866, but these were indeterminate in location and dimensions and to be effective had to be used and occupied. None of the lands claimed by Emiliani were ever occupied or used by the Panama Railroad Co. As to any part of the lands being within the public domain, that was a question squarely in issue in the proceedings in the District Court for the Canal Zone, hereinafter referred to, and was there adjudicated in Emiliani's favor. This was also a matter which the Joint Land Commission undertook to determine, although it was not within the province of that Commission to pass on matters of title.

10, 11, 12. Paragraph 10 beginning, "The title to all of the land," and the succeeding two paragraphs of the report appear to correctly state the facts, but with some lack of completeness.

13. The paragraph beginning, "Although the Emiliani claims," is incorrect, at least in part. Some, if not all, of the Emiliani lands were taken forcibly from Emiliani long prior to December 1914. In fact some of the occupants of the lands were arrested and detained by the authorities in 1913 as for trespassing. It may be that some of the lands were not taken until April 1916, as stated.

14. The fourteenth paragraph beginning, "As shown above," is correct. The parties came to an agreement as to the value of the improvements and Emiliani was paid therefor. Incidentally, isn't it rather remarkable that \$48,718 should be allowed as for improvements on lands determined as worth \$9,250?

15. The paragraph beginning, "In its award," appears correctly to state something of what the Joint Land Commission determined. It will be noted that it concluded that large parts of the lands claimed by Emiliani belonged to the Republic of Panama and hence, under the treaty, to the United States. Also that part of the lands claimed by Emiliani belonged to the Panama Railroad Co. The Commission did not determine the value of the lands claimed by Emiliani and there never has been any determination of such value. It purported to determine the value of only a small portion thereof; in other words, the Commission concluded that only a small part of the lands claimed by Emiliani really belonged to him. As will presently be shown this is directly contrary to the findings of the United States District Court for the Canal Zone, which alone would have the

authority to pass on questions of title to lands within the Canal Zone. The Joint Land Commission had no such authority.

16, 17, 18. The paragraph beginning, "On July 30, 1918," and the two succeeding paragraphs of the report are correct.

19, 20. The paragraph beginning, "After December 5, 1921," and the succeeding paragraph, are designed to minimize the force and effect of the decision by the United States District Court for the Canal Zone in the case of *Panama Railroad Company v. Mendez et al.*, civil No. 2, decided February 26, 1921, a case that was pending at the very time the Joint Land Commission made its award on July 2, 1918, which squarely determined the matter of title to the lands as vested in Emiliani. Emiliani vainly sought to obtain deferment on action by the Joint Land Commission pending the outcome of this suit, in which title to the Emiliani lands would have been and was judicially determined. The Commission, without authority of law or treaty, proceeded to exclude from its determination the major portion of the Emiliani lands, the ownership of which as later found by the district court was in Emiliani and in no one else.

These paragraphs of the report gloss over this situation without giving the true picture. The inference sought to be conveyed is that this was an uncontested action and that the decision of the court was rendered in default of opposing contentions. The Congress will not fail to note that the suit was by the Panama Railroad Co., not by Emiliani. The Panama Railroad Co. was the agent of the United States, the United States owning all of its capital stock. The title to the Emiliani lands was directly in question and proofs were offered. If the Panama Railroad Co. and hence the United States failed to present any proofs it had as showing lack of title in Emiliani, it certainly should be willing further to contest the matter of title in the same court at this time.

21, 22, 23, 24, 25. The paragraph beginning, "On June 14, 1925," and the succeeding four paragraphs are correct, but their materiality as to any present matter is not seen. Romano Emiliani, Sr., died as stated and there were certain complications as to who were his proper heirs, all of which matters have been settled in the court, and are not now in question. The only question now is as to whether the estate of Romano Emiliani, Sr., which, of course, includes his legitimate heirs, is entitled to the relief now sought.

26. The paragraph beginning, "Since the death of Emiliani," is correct but inconclusive. It should satisfy the Congress that whatever else the War Department may report, the fact remains that the United States has had the use and benefit of lands belonging to Emiliani, taken in or prior to 1914, and on which millions of dollars of improvements have been placed (Coco Solo naval base, naval submarine base, etc.) without ever paying 1 cent as covering compensation for the lands so taken and used. The implication as sought to be conveyed that there has been gross negligence amounting to laches by the claimant in not sooner presenting and urging the claims in hand. However, the report shows, and the fact is, that constant efforts have been made to obtain what was manifestly in order, namely, a reconsideration by the Joint Land Commission, or whatever person or body succeeded to the duties of that Commission. All such efforts have been met by the same kind of response now made by the War Department in its report on this bill; namely, that the Joint Land Commission was the one and final authority and that its mistakes are not subject to review or correction by any other authority.

It is not thought that such contentions and interpretations will appeal to the Congress as fair or reasonable. On its face, the award of the Joint Land Commission included only a fraction of the lands belonging to Emiliani. Emiliani never accepted the award or conclusions of that Commission and he, or his successors or representatives, have repeatedly and continuously sought to obtain a just award instead of the inadequate and incomplete award made by the Joint Land Commission. No just award can ever be obtained unless Congress now authorizes some tribunal to consider all the facts and make such an award as the merits of the matter may determine.

27. The paragraph beginning, "In view of the history," is but an echo of what claimant has been hearing for twenty-odd years, that "there is no legal or equitable basis for the reopening of these claims." The Congress will note that the statement is against the reopening. Even the War Department, even the Governor of the Panama Canal, would not have the hardihood to say that this claim is inequitable or unjust. No one in authority would or could take such a position. Manifestly the claim is neither inequitable or unjust, and, except for the bar of the statute of limitations, is legal. Certainly it is just. The Emiliani estate certainly ought to be paid the value of the lands taken and used by the United

States since 1912, as of the date of taking. Any land taken in the United States under similar circumstances would have been paid for as a matter of course long since. It is only because the lands belonged to an alien not a citizen of the United States and unfamiliar with the ways and means of presenting his claim that the claim has not long since been adjudicated and paid.

28. The Congress will make its own conclusions as to what the bill means. It ought to mean that the Emiliani estate is to be given its day in court, with its opportunity of proving what the Joint Land Commission refused to consider the value of the lands taken, instead of a mere fraction thereof.

29. This paragraph beginning, "At the outset," is merely argument. The Congress will not fail to note that under the treaty with Panama this claimant had no recourse to the courts of the United States. His recourse was limited to the Joint Land Commission. When that Commission failed and refused to pass on the merits of the claim submitted, but confined its activities to a determination beyond its purview, namely, that of title, and as to the value, not of the whole of the lands involved, but only as to a small fraction thereof, it left the claimant without other remedy than an appeal to the constituted authorities of the Canal Zone.

Such an appeal has been made and reiterated over the years without success. It is for this reason alone that the claimant has not had the matter presented to Congress sooner. This is the first time it has been so presented. Others, in similar situation, have only within very recent years followed a like course. The Playa de Flor Land & Improvement Co., in similar situation, applied for similar relief which has now become law, and the claims in that case are now in course of adjudication by the District Court for the Canal Zone. There really is no reason why there should be any discrimination as between the *Playa de Flor* case and that of the estate of Romano Emiliani. The cases are very similar. Both cases involve lands immediately adjacent to Colon, C. Z., the only difference being that the Playa de Flor lands are near the entrance to the Canal, while the Emiliani lands are on the opposite side of the bay where the naval base and other great public works are now located.

30 to 49. The paragraph beginning, "As shown in the summary of facts," and the succeeding paragraphs extending to the one beginning, "It is to be noted," are arguments in support of the position now taken by the War Department, which is the same position that has been taken by the Governor of the Panama Canal over the years. It amounts to an argument that "might makes right"; that because the Government's own agent, the Joint Land Commission, failed to do its duty, no duty remains to be done by anyone. The answer to all such arguments would appear to be that the United States took, in the manner provided by law, a large acreage of valuable lands belonging to Emiliani and has never yet paid 1 cent for the lands so taken. Can any specious reasoning justify such a position? The claimant is asking only that he have a day in court, before a fair-minded tribunal. He has never had such a day. He has vainly sought the same from the beginning. Is the Congress to accept the specious arguments of the War Department in such a case rather than to look the facts squarely in the face and attempt a measure of justice?

50. The final paragraph merely summarizes all that has gone before, and calls for no special comment. The gist of the War Department's position is now what it has been over the years that the claim "has been finally determined." It is not argued, and cannot be correctly argued, that the claim has been justly determined or fully determined. On its face, the award of the Joint Land Commission shows a lack of determination that is amazing. The relief sought certainly should be granted by the Congress.

Respectfully submitted.

ESTATE OF ROMANO EMILIANI, Sr.,
By GEO. R. SHIELDS, Attorney.

JAMES T. CLARK, of counsel, November 15, 1941.

WAR DEPARTMENT,
Washington, January 29, 1942.

The Honorable DAN R. McGEHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. McGEHEE: Reference is made to your letter of December 23, 1941, requesting that I reconsider my report of September 26, 1941, which set forth my view and recommendations regarding H. R. 5295, a bill for the relief of the estate

of Romano Emiliani, with a view to clearing up any differences between that report and the recommendations of the Honorable Patrick J. Hurley, former Secretary of War, on a claim for the relief of the Playa de Flor Land & Improvement Co. With your letter there was transmitted for consideration a copy of the transcript of the proceedings of the Subcommittee on Claims at a hearing held by that subcommittee on December 19, 1941, for the consideration of H. R. 5295.

My comment upon the difference between the recommendations of Secretary Hurley with respect to the Playa de Flor claim and my report of September 26, and upon the transcript of the proceedings of the Subcommittee on Claims, logically falls into two categories: namely, (a) the difference in the status of the claim of Romano Emiliani and that of the Playa de Flor Land & Improvement Co.; and (b) the essential differences in the respective bills for the relief of the Playa de Flor Land & Improvement Co. and for the relief of the estate of Romano Emiliani, a matter which received little or no consideration at the subcommittee's hearing on December 19, 1941.

As to the difference in the status of the two claims, the important consideration, and the consideration which in my opinion clearly justifies the difference between the position taken by Secretary Hurley with respect to the bill presented by him in behalf of the Playa de Flor Land & Improvement Co. and the position taken by me with respect to H. R. 5295, is the fact that the Playa de Flor claim was never adjudicated by the Joint Land Commission constituted under the provisions of the 1903 treaty between the United States and the Republic of Panama for the purpose of appraising and settling all claims arising out of the taking of private lands in the Canal Zone, whereas the Emiliani claim was so adjudicated and an award made by the unanimous action of the Commission composed of two Americans and two Panamanians, pursuant to the provisions of the treaty. It is true that that award was not accepted. However, it seems unlikely that anyone would seriously contend that all the numerous claimants who secured and accepted awards from the Commission could have saved to themselves, by the simple expedient of refusing to accept the awards, a right to special relief from Congress in the way of a bill vesting in the United States District Court for the District of the Canal Zone jurisdiction to try such claims *de novo*. Yet, the position of the heirs of Romano Emiliani is no different from that of other claimants whose claims were passed upon by the Commission, except that the claimant in the instant case refused to accept the award. That is not thought to be sufficient to entitle his heirs to a retrial of the issues once tried before the Joint Land Commission.

The contention has been made that the Joint Land Commission had no authority to pass upon the legality of a claimant's title. Conceding for the purpose of discussion only that the Commission's authority to adjudicate adverse claims of title to a particular area as between two or more private claimants is questionable, it is to be noted that the Commission on March 18, 1913, adopted a rule of procedure which, insofar as here pertinent, reads as follows:

"If, in the course of the adjudication of a claim, an adverse claimant to title appear, the Commission will deposit any award that may be made for such land with a court of competent jurisdiction, and leave the adjudication of the rights of adverse claimants to such tribunal."

It is known that in various cases the Commission followed this rule when two or more adverse claimants, each alleging title in himself to the same piece of property, applied for an award for the taking of that property. There is no reason to believe that it ever refused to follow the rule in such cases. However, the Commission took the position that in the case of a single claimant making a claim for an award by reason of the taking by the United States of property which he allegedly owned, that it necessarily had the authority, as an incident to the making or refusal of an award, to determine whether that claimant had made a *prima facie* showing of title to the land. Since no claimant would be entitled to an award unless he made such a *prima facie* showing of title in himself, it seems apparent that the Commission necessarily had authority to determine whether the evidence was sufficient to make a *prima facie* case and that the position of the Commission in this respect was sound. The Emiliani case was such a case. The Commission, after fully examining the evidence, determined that Emiliani had not shown that he had at any time acquired title to certain portions of the land which he claimed to own. The Commission did not pass upon any dispute arising by reason of any adverse claim of title by another private claimant. It is thought that the Commission's ruling should be considered final.

Taking up now the difference between the bill for the relief of the Playa de Flor Land & Improvement Co. and H. R. 5295, the bill for the relief of the estate of Romano Emiliani, it is apparent that there exists in the difference in form and

content of the two bills additional reason for the difference in the position taken by Secretary Hurley with respect to the Playa de Flor bill and that taken by me with respect to H. R. 5295. The bill upon which Secretary Hurley commented in his letter of January 26, 1932, to the Honorable Thomas D. Schall, provided merely "that jurisdiction is hereby conferred upon the District Court of the Canal Zone to hear and determine, but subject to the provisions for appeal as in other cases provided by the Panama Canal Act, as amended, the claim of the Playa de Flor Land & Improvement Co. against the United States on account of property taken by the United States in the Canal Zone."

If it be conceded that there is no substantial objection to the trial of the issues in the Playa de Flor claim, the bill originally presented by Secretary Hurley, which bill on May 21, 1934, became Private Law No. 165 of the Seventy-third Congress, is not objectionable in form or substance since it merely vests in the district court jurisdiction to hear and determine such issues subject to the right of either party to appeal as in any other case. The same cannot be said of H. R. 5295, which is objectionable from the standpoint of the Government on numerous grounds which are set out in detail on pages 10 to 17, inclusive, of my report of September 26, 1941, and which are summarized in that report substantially as follows:

(a) The bill does not contain any specific provision for the trial of the disputed issue of Romano Emiliani's title to the land in question and, in fact, might be construed as constituting a legislative determination that Emiliani had title to all the land, contrary to the finding of the Joint Land Commission.

(b) The bill erroneously recites that no compensation for the taking of the lands by the United States has ever been paid or allowed, when, as a matter of fact, an award of over \$9,000 for the portion of the land which the Commission found that Emiliani owned, was allowed.

(c) The bill directs the court hearing the claim to receive and consider evidence received by the Joint Land Commission pertaining to the extent of taking and the value of the lands, but fails to provide for the admission of evidence received by the Commission on the fundamental issue of Emiliani's title, thereby excluding such evidence.

(d) The bill does not give to the Government any right to object to the admission of evidence received by the Joint Land Commission.

(e) The bill directs the court to receive and consider on the issue of Emiliani's title a decision of the District Court for the Canal Zone in a suit brought by the Panama Railroad Co. in 1912 to quiet title to the lands in question, which decision was made in 1921 after title admittedly had been taken by the United States by Executive order of December 5, 1912, and after the Panama Railroad Co. had filed a disclaimer of interest for the reason that the title had been taken by the United States. The United States was not a party to this action, was not represented by any competent agent in the action, and could not have been represented by the Panama Railroad Co., a corporation organized and existing under the laws of the State of New York for purposes which do not include the representation of the United States Government in cases such as that referred to.

(f) The bill directs the court to evaluate the lands for the taking of which damages are claimed upon the value as of the time of taking, contrary to the express provisions of article VI of the 1903 convention between the United States and Panama wherein the two countries, by treaty having the force and effect of law in each, specifically provided that the appraisal of such lands should be based upon their value before the date of that convention.

(g) The bill provides for a trial either in the Court of Claims or the United States District Court for the District of the Canal Zone as the claimant may elect. In view of the volume of the records on the Isthmus involved in this case and the fact that the majority if not all the witnesses who are available reside on the Isthmus, it is thought that the United States District Court for the District of the Canal Zone should be specified as the court wherein the trial should be had if a trial is to be permitted.

It is believed that the above will serve to clarify any apparent differences in the recommendations of Secretary Hurley made in 1932 with respect to the bill presented by him for the relief of the Playa de Flor Land & Improvement Co., and the report made by me on September 26, 1941, with respect to H. R. 5295.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.